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No. - .

Supreme Court, U.S.
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In the
Supreme Court of the United States.

OCTOBER TERM, 1986.

LOUISE V. CAVANAUGH, WILLIAM J. CAVANAUGH,
INDIVIDUALLY AND LOUISE V. CAVANAUGH
AS ADMINISTRATOR OF THE ESTATE
OF 2ND LT. WILLIAM J. CAVANAUGH, JR.,
PETITIONERS,

v.

UNITED STATES GOVERNMENT AND
UNITED STATES AIR FORCE,
RESPONDENTS.

Petition for Writ of Certiorari for the Petitioners, Louise V. Cavanaugh, William J. Cavanaugh, Individually and Louise V. Cavanaugh, as Administrator of the Estate of 2nd Lt. William J. Cavanaugh, Jr.

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Questions Presented for Review.

I. Whether the district court erred in ruling that the complaint fails to state a claim for damages under the Federal Tort Claims Act, 28 U.S.C., § 1346(b) in that state law recognizes no comparable private liability for any failure by the Air Force to conduct a thorough and impartial investigation.

II. Whether the district court erred in ruling that mandamus does not lie to compel the U.S. Air Force to comply with Air Force Regulation 30-25 requiring that military personnel conduct a "thorough" and "impartial" investigation into the facts and circumstances surrounding the death of a member of the U.S. Air Force.

Parties to the Proceeding.

Petitioners, who were appellants below, are Louise V. Cavanaugh, William J. Cavanaugh, Individually and Louise V. Cavanaugh as Administrator of the Estate of 2nd Lieutenant William J. Cavanaugh, Jr., U.S. Air Force.

Respondents, who were appellees below, are the United States of America and the United States Air Force.

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Petition for Writ of Certiorari for the Petitioners, Louise V. Cavanaugh, William J. Cavanaugh, Individually and Louise V. Cavanaugh, as Administrator of the Estate of 2nd Lt. William J. Cavanaugh, Jr.

Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The Petitioners, Louise V. Cavanaugh, William J. Cavanaugh, individually, and Louise V. Cavanaugh, as administrator of the estate of 2nd Lieutenant William J. Cavanaugh, Jr., United States Air Force, appellants in the court

below, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in the above case on February 13, 1987. That decision affirmed the judgment of the United States District Court for the District of Massachusetts on May 19, 1986.

Opinion Below.

The opinion of the United States Court of Appeals for the First Circuit is unpublished and is reproduced at page 1a in the Appendix.

The opinion of the United States District Court for the District of Massachusetts is published at 640 F.Supp. 437, and is reproduced at page 4a of the Appendix.

Jurisdiction.

The judgment of the Court of Appeals for the First Circuit was entered on February 13, 1987. The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. § 1254(1).

Statutory and Regulatory Provisions Involved.

Title 28, United States Code, Section 1346(b), 2671 et seq., Federal Tort Claims Act (in pertinent part):

§ 1346. United States as defendant

. . . . . .

(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court

for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Title 28, United States Code, Section 1361, Mandamus Statute:

§ 1361. Action to compel an officer of the United States to perform his duty

The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

. . . . . .

Air Force Regulation 30-25 (in pertinent part):

Circumstance and Condolence Letters, Reports of Facts and Circumstances of Death, and Other Documentation

5-1. Purpose of These Letters:

a. Circumstance letters convey a commander's condolences, and provide the NOK with complete information concerning the events leading to and surrounding the death or missing status of an Air Force member. A commander's failure to maintain close contact with the NOK until all circumstances

are furnished creates the impression that the Air Force is negligent and unconcerned or that information is being withheld.

b. Condolence letters ensure that NOK receive a proper expression of sympathy when circumstance letters are not required and condolences have not been expressed by other means.

5.2. Circumstance Letters:

. . . . . .

c. If all circumstances have not been included in the first communication, dispatch subsequent correspondence at 30-day intervals until all the known facts have been related to the families. If the investigation has not been completed, the interim letters state this. Figure 5-2 is a sample interim letter.

d. If death is the result of an incident that requires a Report of Facts and Circumstances under section B of this chapter, state in the circumstance letter that an investigation is being performed and the NOK will be advised of the findings. In these instances, final circumstance letters are sent immediately on completion of the Report of Facts and Circumstances. The commander restates all previously furnished circumstances and includes new circumstances revealed by the report. Figure 5-3 is a sample final circumstance letter.

. . . . . .

5-15. When Death Occurs From Other Than Natural Causes:

a. **Report of Facts and Circumstances of Death.** When a member dies from other than natural causes, the Air Force has an obligation to ensure that the death is thoroughly investigated and an impartial report prepared. In establishing the criteria for the report, efforts have been made to ensure that it contains the information required to comply with the various laws administered by the VA, as well as to fulfill the other requirements outlined in paragraph 5-12. The exhibits required

depend on the cause of death and the conditions under which death occurred. Table 5-1 lists the exact exhibits required for the report, depending on the cause and circumstances of death. AF Form 25 with exhibits is required on all personnel listed in paragraph 5-13 when death occurs from any cause listed in b through f below:

. . . . . .

e. **Suicide.** When death results from suicide, primary efforts are made to determine whether the deceased had any type of mental disorder or a motive for self-destruction: that is, financial, domestic, or disciplinary problems. All available evidence concerning the deceased during and before the suicide that might disclose a basis for the act is investigated. It is within the competency of any individual with whom the deceased associated, without medical or psychiatric training, to describe, in lay terms, the behavior, personality, reactions, and adjustments of the deceased. When any evidence is revealed indicating that self-destruction was motivated by a desire to evade disgrace or punishment, all clues are thoroughly investigated in an effort to establish the facts. The reporting officer obtains signed statements from the last known persons to have seen the individual alive, as well as coworkers, friends, and associates having daily contact with the deceased. When the circumstances reveal that the spouse or other relatives know of material conditions leading to self-destruction, efforts are made to obtain signed statements form [*sic*] them. If they decline to make a statement, the reporting officer completes and signs a statement to this effect, giving the reasons. This statement is included under Tab D. (See table 5-1).

. . . . . .

5.17. Responsibility for Preparation

f. Responsibilities of the Reporting Officer:

(1) Complete AF Form 25 with facts uncovered by the investigation. Avoid conjecture or opinionated responses.

(2) Thoroughly investigate the circumstances surrounding the death and obtain signed statements from all eyewitnesses, persons who know of material conditions leading to the incident, and those who may have personal knowledge of the incident.

(3) Submit the report to the Personal Affairs office to ensure proper format and sufficiency. The Personal Affairs office forwards the properly tabbed and documented report to the address in paragraph 5-20d.

. . . . . .

Table 5-1 (footnote 4)

[4] In addition to on-the-scene witnesses, signed statements must be obtained from individuals in a position to give an opinion regarding the decedent's actions before death, personality, threats of suicide, motive for suicide, and drinking habits, and from the last known person to have seen the individual alive.

Statement of the Case.

Petitioners commenced this action seeking damages under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2671 *et seq.*, and a writ of mandamus requiring the United States Air Force to conduct a thorough and impartial investigation into the facts and circumstances surrounding the death of their son, 2nd Lieutenant William Cavanaugh, Jr. Lieutenant Cavanaugh's body was found, with a rifle wound to the head, in his off-base apartment in Mesa, Arizona on April 11, 1982. At the time of his death, he was serving on active duty in the United States Air Force and was sharing an apartment with two other active duty

members of the Air Force. Lt. Cavanaugh's Air Force duties had consisted of acting as a drug abuse counselor and officer in charge of the counseling of active duty service members suspected or acknowledged to be drug abusers.

Almost immediately and with only the most cursory investigation, Mesa Police authorities and the Air Force decided that Lt. Cavanaugh's death resulted from suicide and not homicide. Even before the petitioners were notified of the death of their son, the death scene was cleaned by a professional cleaning company destroying evidence and the body was removed from the scene.

Upon learning of the death of his son, the petitioner Mr. Cavanaugh (who is a Colonel in the U.S. Army Reserves), his brother, and two surviving sons flew from Boston, Massachusetts to Mesa, Arizona to speak with Air Force and Mesa, Arizona officials. Petitioners' complaint, which is reproduced in the Appendix, details the efforts made by petitioners to discover the true facts and circumstances surrounding their son's untimely, suspicious death. The Cavanaughs requested that the Air Force do everything within its power to uncover the true circumstances and facts surrounding the death of Lt. Cavanaugh. Mr. Cavanaugh made it known that he was interested in obtaining the truth, whether the truth revealed that his son was murdered or committed suicide. Within a day or two of the discovery of Lt. Cavanaugh's body, Mr. Cavanaugh was given assurances by the base commander of Williams Air Force Base and other officials that the Air Force, as required under Air Force Regulation 30-25, would conduct a thorough and impartial investigation and in so doing would conduct certain scientific tests.

However, the Air Force did not follow through. There was no interview of all key witnesses, as required by Air Force Regulation 30-25, and the promised scientific tests were not performed. As the complaint alleges, the Air Force investiga-

tion was perfunctory and superficial. The Air Force report of facts and circumstances did not even list a cause of death or the time of death. No autopsy was performed. There was no scientific test conducted of the weapon which killed Lt. Cavanaugh, other than to note that no fingerprints at all were found on what the Air Force claims is the suicide weapon. No interviews were conducted of those persons Lt. Cavanaugh had counseled in his position as a drug abuse counselor at the Air Force base. Despite the fact that Lt. Cavanaugh had suspected a non-commissioned officer in his office of dealing in drugs, this Air Force member was not interviewed by the Air Force.

The complaint further alleges that the United States Air Force violated its own regulations, namely, Air Force Regulation 30-25, in the investigation of the death of the Petitioners' son. The Petitioners allege that there are numerous omissions, errors, and inconsistencies in the report prepared by the Respondents which make it impossible to rule out that their son was murdered (A. 23a, 31a, 32a). The Petitioners contend that they suffer from emotional damage in that as a result of the Air Force's failure to abide by its regulations and undertake a thorough and impartial investigation, they are forever condemned to suffer in not knowing how their son died, and whether he committed suicide, or was the victim of murder.*

According to an affidavit of Dr. Robert W. Guimond, Professor of Medical Physiology at the University of Massachusetts, Ph.D., J.D., who was subsequently retained by Petitioners to evaluate the methods used and conclusions reached by the Air Force:

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* The complaint also alleged breach of contract (A. 23a). The breach of contract claim arises out of the reliance by the Cavanaughs upon the assurances they received that their son's death would be thoroughly investigated and certain scientific tests employed.

> . . . the Cavanaughs have sufficient basis for their belief that their son's death may have resulted from other than suicide. The scientific tests relied upon by the Mesa Police Department, by the Maricopa County Medical Examiner and by U.S. Air Force investigative personnel are in my judgment insufficient and inconclusive. Furthermore, the written statements of all individuals questioned as to Lt. Cavanaugh's mental state in the period preceding his death do not to any reasonable interpretation, nor do statements from family members, friends and co-workers made to Colonel Cavanaugh immediately before and after Lt. Cavanaugh's death, provide a convincing motive for suicide. It is my opinion that only a thorough and impartial investigation as is being sought by the Cavanaughs holds promise of revealing the true facts and circumstances of Lt. Cavanaugh's death.

(A. 35a).

The Respondents moved for summary judgment asserting that there was no dispute as to material facts and that they were entitled to judgment as a matter of law. Fed.R.Civ.P. 56. The Petitioners opposed the motion and filed a memorandum. After oral argument the district court held for the government and entered a memorandum and order.

The Court of Appeals for the First Circuit, after oral argument, upheld the district court's decision. In a *per curiam* opinion the Court of Appeals below essentially relied upon the analysis set forth by the district court (A. 2a).

Reasons for Granting the Writ.

I. This Case Raises Important Questions Concerning Investigation By Military Agencies Into the Facts and Circumstances Surrounding the Death of Their Members.

The complaint asserts that the investigation by Respondents into the untimely death of Lt. William Cavanaugh, Jr., was perfunctory, incomplete, superficial, and partial and does not foreclose the possibility that their son was murdered.

This case therefore presents the important question of whether a branch of the armed forces will be held accountable under its own lawfully promulgated regulations to conduct a thorough investigation into the untimely, unnatural death of one of its members. This case also raises the important issue of the nature of the responsibility of a military agency, in this case, the U.S. Air Force, to the next of kin of persons who die while serving on active duty. This case therefore has broad and significant impact concerning the rights of relatives of service men and women.

That the district and circuit courts below would rule in favor of the Respondents, thus leaving Petitioners without further redress in the courts, and thereby leaving Petitioners to suffer for the rest of their lives without knowing the true facts and circumstances of their son's death, is a matter of importance which this Court should closely scrutinize.

Furthermore, under the circumstances of this case in which 2nd Lt. Cavanaugh was serving on active duty as a drug abuse counselor, and was thereby virtually in the front lines of the war against military drug abuse, *see, e.g., Murray* v. *Haldeman*, 16 M.J. 74 (C.M.A. 1983), it is shocking that upon his death the Air Force would not actively investigate in conformity with its own regulations.

II. The Decision of the Court of Appeals Below Improperly Limits the Scope of the Federal Tort Claims Act, 28 U.S.C. § 1346(b), by Misconstruing Massachusetts Tort Law as Applied to this Case.

The Court of Appeals below relied upon *Zabala Clemente* v. *United States*, 567 F.2d 1140 (1st Cir.), *cert. denied*, 435 U.S. 1006 (1976) (A. 3a). In *Zabala*, however, unlike the instant case, there was no showing of reliance upon or knowledge on the part of the injured party of an agency directive. Here, Petitioners were informed upon the death of their son of the Air Force's regulations requiring a thorough investigation and were assured an investigation would be performed in compliance with agency directives. If they had not been so assured, or if there had been no regulation requiring a thorough investigation, Petitioners would have undertaken their own, independent investigation. Moreover, once the government gratuitously undertakes to perform a service upon which members of the public justifiably rely, it will be held to an appropriate standard of care in carrying out the service. *Indian Towing Co.* v. *United States*, 350 U.S. 61, 76 S.Ct. 122, 100 L.Ed. 48 (1955). The fact that the directive or agency order is not grounded upon a statute does not absolve the agency of liability.

A. *The Complaint States a Claim Under the Federal Tort Claims Act in that Under Massachusetts Law Relief Can Be Granted to Petitioners for Intentional Infliction of Emotional Distress.*

The Court of Appeals below adopted the reasoning of the district court below that under Massachusetts tort law the Petitioners' complaint failed to state a claim for intentional infliction of emotional distress (A. 3a). In so holding, the

federal district court misconstrued Massachusetts case law as it applies to this case and thereby improperly limited the scope of the Federal Tort Claims Act. The analysis of the Court of Appeals is flawed and certiorari should be granted to allow review.

Petitioners' complaint, viewed in the light most favorable to Petitioners, satisfies the legal standard within the Commonwealth of Massachusetts for intentional infliction of emotional distress. *Agis* v. *Howard Johnson Co.*, 371 Mass. 140 (1970). As the district court stated, under the *Agis* standard the Petitioners must show several factors: first, that the Air Force either intended to inflict emotional distress or it knew or should have known that emotional distress was the likely result of its conduct; second, Petitioners must show that the conduct of the Air Force was "extreme and outrageous," "beyond all bounds of decency" and is "utterly intolerable in a civilized community"; third, the Petitioners must show that the actions of the Air Force were the cause of the distress; fourth, Petitioners must show that the emotional distress sustained by Petitioners was "severe" and of a nature that "no reasonable man could be expected to endure it." (A. 6a.)

The district court misconstrued Petitioners' claims. Contrary to assertions made by the district court, Petitioners are not seeking to hold the Air Force responsible for the death of their son or the pain they have suffered as a result of the death of their son (A. 6a). However, the additional pain they have had and continue to experience because they will never know whether their son committed suicide or was murdered is directly attributable to the failure of the Air Force to conduct the thorough investigation required by Air Force regulations. The pain suffered by the Petitioners is similar to that mental pain and anguish suffered by the person who knows that his relative did not receive a proper burial or that the relative's remains are missing. There exists a considerable body of case law which

recognizes as cognizable claims the acute distress suffered by close relatives as a result of interference with the corpses of loved ones or desecration of their memories. H. James and Gray, The Law of Torts (2d ed. 1986), § 16.1, at 382 (cases collected). Cf. *Sanford* v. *Ware*, 191 Va. 43, 60 S.E.2d 10 (1950) (mental anguish caused by plaintiff being told that body properly buried but body actually placed in shallow grave); *Finley* v. *Atlantic Transp. Co.*, 220 N.Y. 249, 115 N.E. 715 (1917) (mental distress caused by burial at sea where steamship company should have transported body to shore).

Furthermore, the Petitioners are not seeking an investigation to their satisfaction but rather they seek an investigation in compliance with the Air Force's own regulations which specifically delineate the duties of the investigating officer and specify that the Air Force has an "obligation" to ensure that the investigation be "thorough" and "impartial." pp. 4, 6, *supra*.

Under the regulation, an officer is required to:

> Thoroughly investigate the circumstances surrounding the death and obtain signed statements from all eyewitnesses, persons who know of material conditions leading to the incident, and those who may have personal knowledge of the incident.
>
> . . . . . .
>
> In addition to on-the-scene witnesses, signed statements *must be obtained* from individuals in a position to give an opinion regarding the decedent's actions before death, personality, threats of suicide, motive for suicide, and drinking habits, and from the last known person to have seen the individual alive. [Emphasis added.]

Air Force Regulation 30-25, ¶ 5.17f and Table 5.1, fn 4.

The Air Force investigating officer did not interview numerous witnesses, including: the decedent's co-tenant, who owned the gun which fired the fatal shot; another co-tenant, who found the body; the owner of the apartment where decedent lived, who was an active duty officer and who immediately following the discovery of decedent's body hired a cleaning crew which destroyed and removed evidence from the scene of the death; the decedent's headquarters unit commander, with whom decedent ate dinner approximately two days prior to decedent's death; neighbors of the decedent; persons with whom decedent worked in his job as officer in charge and drug and alcohol abuse counselor at the Substance Abuse Section at William Air Force Base; and an active duty subordinate of decedent's, whom decedent had suspected was involved in illegal drug activity.

The Air Force must have known that it is of extreme and profound importance to the parents of an alleged suicide victim to know with as much certainty as is possible the cause of death and the basis used to determine the cause and circumstances of death. The immediate visit by Mr. Cavanaugh, his brother, and two surviving sons with Air Force officials and the extensive correspondence sent to the Air Force by the Petitioners, repeatedly requesting that a proper investigation be undertaken surely put the Air Force on notice that the failure to perform a thorough investigation in accord with Air Force Regulations was and would continue to be extremely distressing to Petitioners. Furthermore, the applicable regulation puts Air Force personnel on notice that failure to provide information "creates the impression that the Air Force is negligent. . . ." p. 4, *supra*.

B. *The Complaint States a Claim Under the Federal Tort Claims Act in that Under Massachusetts State Law Relief Can be Granted for Negligent Infliction of Emotional Distress.*

The courts below held that Petitioners fail to state a claim for negligent infliction of emotional distress. The federal district court cited *Payton* v. *Abbott Labs*, 386 Mass. 540 (1982) and *Dziokonski* v. *Babineau*, 375 Mass. 355 (1978) for the proposition that it is incumbent upon the Cavanaughs to allege accompanying physical harm in order to state a claim for negligent infliction of emotional distress. Upon a review of the "present record" the district court ruled that the Cavanaughs' complaint failed to state a claim for the negligent infliction of emotional distress because the Cavanaughs had failed to allege physical harm (A. 7a).

However, the "present record" shows that the Cavanaughs did allege physical harm. The Petitioners stated in their answers to interrogatories that they suffered physical harm: 1) aggravation of pre-existing heart condition of Petitioner Louise V. Cavanaugh, and 2) depressive illness of Petitioner William J. Cavanaugh. Answer of William J. Cavanaugh to Interrogatory Number 8 of Interrogatories Propounded by the United States, dated November 9, 1985.

III. THE DECISION OF THE COURTS BELOW THAT MANDAMUS DOES NOT LIE TO COMPEL THE AIR FORCE TO CONDUCT A "THOROUGH" AND "IMPARTIAL" INVESTIGATION RELATIVE TO THE DEATH OF 2ND LT. WILLIAM CAVANAUGH, JR., IS IN CONFLICT WITH PRINCIPLES OF LAW ENUNCIATED BY THIS COURT.

Under the mandamus statute, 28 U.S.C. § 1361, in order for a plaintiff to prevail the plaintiff must have a clear right to relief, the defendant must have a clear duty to act, and the

plaintiff must have no other adequate remedy at law. *Bankers Life & Cas. Co.* v. *Holland*, 346 U.S. 379, 382-385 (1953); *Ex parte Fahay*, 332 U.S. 258, 259 (1947). The plaintiff has the burden of showing that his right to the issuance of the writ is clear and indisputable. *United States* v. *Duell*, 172 U.S. 576, 582 (1899).

The district court's opinion below appears to deny mandamus relief on the basis that the extraordinary remedy of mandamus should not be invoked for several reasons (A. 9a, 10a). However, under Air Force Regulation 30-25, the duties of the Air Force are clearly specified and free from doubt. The regulation specifies with precision who must be interviewed, and what evidence must be gathered. The Air Force had a duty to act and failed to do so. Thus, the instant case fulfills those requirements for mandamus set forth in case law and cited by the federal district court in its memorandum. *Panama Canal Co.* v. *Grace Line Co., Inc.*, 356 U.S. 309 (1958). As this Court explained in *Panama Canal*, when an agency is clearly derelict in failing to act or when an agency action turns on a mistake of law, judicial relief is available under mandamus. See *Harmon* v. *Brucker*, 355 U.S. 579, 2 L.Ed.2d 503, 78 S.Ct. 433 (1958) (mandamus applicable to compel Secretary of the Army to issue honorable discharges where less than honorable discharges were based upon pre-service information.)

In this case, the legal duty owed to Petitioners is specific, plain, ministerial, and devoid of exercise of judgment or discretion. The regulation speaks in mandatory terms of the requisites of the investigation to be performed by the appointed investigating officer. The regulation even differentiates between investigations pertaining to supposed suicides and other investigations.

Moreover, the regulation clearly encompasses Petitioners as persons to who a duty is owed: the nex-of-kin of an active duty

Air Force member who allegedly dies as a result of suicide, are clearly intended to be protected by this regulation. The regulation requires that next of kin be notified of additional information as it becomes available. Here the duty owed to the Cavanaughs as next of kin of a deceased Air Force member is clear.

The federal district court mistakenly contended that Petitioners' sole objection to the Air Force's investigation was in the "thoroughness" of that investigation according to Petitioners own subjective standards. This is a mistaken view of the position of the Cavanaughs and fails to address the fact that the Air Force did not followed its own regulations in investigating the death. It is clear from the decisions of this Court that a government agency is required to follow its own lawfully promulgated regulations. *Service* v. *Dulles,* 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957); *Accardi* v. *Shaughnessy,* 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Vitarelli* v. *Seaton,* 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed. 2d 1012 (1958); *Morton* v. *Ruiz,* 415 U.S. 199, 94 S.Ct. 1055 (1974).

Aside from not interviewing numerous important witnesses, the Air Force did not perform tests which should have been performed, such as physical examination of and autopsy of decedent's body; powder burn tests on clothing and body of decedent; and fingerprint tests on the magazine and cartridges.

Under the circumstances, the Petitioners' allegations support a claim for mandamus. The federal district court has the authority to compel the Air Force to follow its own regulations and should do so in this instance.

Thus the Petitioners' have stated a claim for relief under the mandamus statute, 28 U.S.C. § 1361. This Honorable Court should therefore grant certiorari so that the decision of the courts below may be reviewed.

Conclusion.

For the foregoing reasons, it is respectfully requested that this Honorable Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.

Respectfully submitted,

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Appendix A.

United States Court of Appeals

For the First Circuit

No. 86-1845

LOUISE V. CAVANAUGH, ET AL.,
Plaintiffs, Appellants,

v.

UNITED STATES OF AMERICA, ET AL.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
[Hon. William G. Young, *U.S. District Judge*]

Before
Breyer, Aldrich and Selya,
Circuit Judges.

Louis P. Font with whom *Font & Glazer* was on brief for appellants.

Martha B. Sosman, Assistant United States Attorney, with whom *Robert S. Mueller III*, United States Attorney and *Susan G. Winkler*, Assistant United States Attorney, were on brief for appellees.

February 13, 1987

Per Curiam. This case arises out of the tragic death of William J. Cavanaugh, Jr. while on active duty as a second lieutenant in the United States Air Force. The plaintiff-appellants, Louise V. Cavanaugh and William J. Cavanaugh, are the parents of the decedent. Louise Cavanaugh also sues as the personal representative of the estate.

Following Lt. Cavanaugh's demise, the Air Force conducted an investigation into the circumstances of the death. Mr. and Mrs. Cavanaugh were bitterly disappointed by what they believed to be the superficiality of the Air Force's inquiry and the incompleteness of its report. When they were unable to obtain satisfaction in this respect, they brought suit against the United States and the Air Force in federal district court. The gravamen of their complaint was the allegation that the defendants had failed to meet the requirements of Air Force Regulation 30-25 because the investigation which the Air Force conducted was not "thorough" or "impartial."

The plaintiffs' suit, as filed, attempted to assert four statements of claim. Three of these were under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 *et seq*. (FTCA). The fourth sought relief in the nature of mandamus. 28 U.S.C. § 1361. After discovery had been essayed, the defendants moved for *brevis* disposition. Fed.R.Civ.P. 56. The district court, in a thoughtful memorandum opinion, granted summary judgment in the defendants' favor. *Cavanaugh* v. *United States*, 640 F. Supp. 437 (D. Mass. 1986). This appeal ensued.

We have carefully examined the record in this case and are persuaded that error has not been committed. The district court's opinion adequately explores and explicates the pertinent law, and we affirm for essentially the reasons stated by the court below in its memorandum opinion. We add only two brief observations.

First, as we noted at oral argument, "even where specific behavior of federal employees is required by federal statute, liability to the beneficiaries of that statute may not be founded

on the Federal Tort Claims Act if state law recognizes no comparable private liability." *Zabala Clemente* v. *United States*, 567 F.2d 1140, 1149 (1st Cir.), *cert. denied*, 435 U.S. 1006 (1978). And the mandate of a federal statute is a far stronger foundation for the creation of an actionable state law duty under the FTCA than a regulation or mere administrative directive. *Id.* at 1150.

Second, we remark that the district court's cautious reading of Massachusetts law as it pertains to causes of action for the intentional infliction of emotional distress, 640 F. Supp. at 439-40, has been reinforced only recently by our decision in *Brown* v. *Freedman Baking Company*, No. 85-1598, slip op at 7-9 (1st Cir. Jan. 26, 1987).

Affirmed.

Appendix B.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

William J. Cavanaugh and Louise V. Cavanaugh, Plaintiffs,	)	CIVIL ACTION No. 84-4114-Y
v.	)	
United States Government and United States Air Force,[1] Defendants.	)	

MEMORANDUM AND ORDER

Young, D.J. May 19, 1987

William and Louise Cavanaugh (the "Cavanaughs") allege that they suffered emotional distress as a result of the investigation by the United States Air Force (the "Air Force") of their son's death. The Cavanaugh's seek an order requiring the Air Force to conduct an "impartial and thorough investigation" of their son's death and an award of $1,000,000 in damages. The complaint rests on the Federal Tort Claims Act, 28 U.S.C. § 2674, *et seq.* and the manadamus statute, 28 U.S.C. § 1361, and asserts four causes of action: 1) negligent (and arguably intentional) infliction of emotional distress; 2) misrepresentation; 3) breach of an oral contract; and 4) a right

[1] The Cavanaugh's so style their complaint. Neither the "United States Government" nor the "United States Air Force" are entities capable of being sued. The Court will treat the United States as the actual defendant herein.

to mandamus relief for the failure of the Air Force to act. The United States moves for summary judgment pursuant to Fed.R.Civ.P. 56 arguing that, even with all inferences favoring the Cavanaughs, their complaint fails to state a claim upon which relief may be granted. The Court agrees and, for the reasons set forth below, allows the motion of the United States for summary judgment on all counts.

I.

The facts are simple and not in dispute. On April 11, 1982, the Cavanaughs' son, then a second lieutenant in the Air Force, was found shot in the head in his off-base home in Mesa, Arizona. Mesa police investigated the incident, interviewed Air Force personnel who knew or worked with the decedent, and, based on a note with the body, concluded that the death was a suicide. The Air Force also investigated the death, preparing a Report of Facts and Circumstances. Although the Cavanaughs brought this action to compel a "thorough" investigation, they concede not only that the Air Force prepared a Report of Facts and Circumstances on the death of decedent but also that the Air Force subsequently reviewed that Report. The Court finds this concession significant for it appears that the Cavanaughs' only real complaint is one of scope rather than fact: they invoke the powers of this Court to compel the Air Force to do a better, or more "thorough," job of investigation.

II.

Giving every inference to the Cavanaughs, the Court will treat Count I as alleging, in the alternative, claims for both

the intentional and negligent infliction of emotional distress. To prevail on a claim for the intentional infliction of emotional distress under Massachusetts law[2] the Cavanaughs need not show accompanying physical injury, but must prove the conduct of the Air Force was "extreme and outrageous." *See Agis* v. *Howard Johnson, Co.*, 371 Mass. 140 (1976); *O'Connell* v. *Prudential Insurance Co. of America*, No. 82-3078, slip op. at 11 (D. Mass. November 15, 1985). Under the *Agis* standard, the Cavanaughs must show:

> 1) that the Air Force intended to inflict emotional distress or that it knew or should have known that emotional distress was the likely result of its conduct . . .;
> 2) that the conduct was "extreme and outrageous," "beyond all bounds of decency" and was "utterly intolerable in a civilized community";
> 3) that the actions of the Air Force were the cause of the distress; and
> 4) that the emotional distress sustained was "severe" and of a nature that "no reasonable man could be expected to endure it."

See id. at 144-145 (citations omitted.) The Court acknowledges that the death of a loved one causes searing pain and wounds the heart in ways that few can articulate. Nonetheless, there is absolutely no evidence that the responsibility for this pain rests with the Air Force. Emotionally, the Court sympathizes

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[2] Under the Federal Torts Claims Act the United States is liable for tort claims "in the same manner and to the same extent as a private individual under like circumstances. . . ." 28 U.S.C. § 2674.

with the Cavanaughs but legally the Court must hold that the failure of the Air Force to investigate the suicide of Second Lieutenant Cavanaugh to his parents' satisfaction does not, under the *Agis* standard, state a claim for the intentional infliction of emotional distress.

The Cavanaughs' claim fares no better if treated as a claim for the negligent infliction of emotional distress because Massachusetts law does not recognize a claim for such action absent accompanying physical harm. *Payton* v. *Abbot Labs*, 386 Mass. 540, 547 (1981) (absent physical harm, Massachusetts does not recognize a right of action for emotional distress from statistical likelihood of serious future disease); *Dziokonski* v. *Babineau*, 375 Mass. 555, 568 (1978) (reviewing cases) (allegations of a parent who sustains substantial physical harm as a result of severe mental distress over some peril or harm to his minor child caused by defendant's negligence states a claim upon which relief may be granted).[3] The Cavanaughs' complaint fails to specify the "substantial" harm, the precise physical injury, allegedly caused by the Air Force. Upon a complete review of the present record, the Court must rule that the Cavanaughs' complaint faiis to state a claim for the negligent infliction of emotional distress even with every inference taken in their favor.

In Count 2 the Cavanaughs allege a breach of contract in that the Air Force "expressly and repeatedly asserted that a thorough investigation would be performed." It is well established, however, that a contract, whether oral or written, binds only if there is consideration for the promise. *Mecorney* v.

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[3] Arizona law supports the same result. *Keck* v. *Jackson*, 122 Ariz. 114, 593 P.2d 668, 669 (1979) (In order to recover for the tort of negligent infliction of emotional distress, the shock and mental anguish of the plaintiff must be manifested as physical injury).

Stanley, 8 Cushing 85 (Mass. 1851).[4] In addition to consideration, an enforceable contract requires mutual assent. *Gill* v. *Richmond Co-op Assoc. Inc.*, 309 Mass. 73 (1941). After diligent search, the Court can identify neither consideration nor any other classic indicia of a contract for that matter.[5] The Court must conclude that no contract exists.

The Cavanaughs also allege detrimental reliance on the assurances of the Air Force. Even treating this as a claim under the doctrine of promisory estoppel, it must fail because nowhere is there evidence that the Cavanaughs' reliance to their detriment rises to the level of a "legal" detriment — that is, "giving up something which immediately prior thereto the promisee was privileged to retain, or doing something or refraining from doing something which he was privileged not to do, or to refrain from doing." *Graphic Arts Finishers, Inc.* v. *Boston Redevelopment Authority*, 357 Mass. 40, 42-43 (1970), (quoting from Williston, Contracts [3rd ed.] § 102A). Accordingly, there can be no recovery on a theory of reliance.

In any event, even if the Cavanaughs had alleged a cognizable claim for breach of contract, this Court would lack jurisdiciton to hear it. The Tucker Act, 29 U.S.C. § 1491, gives the Court of Claims exclusive jurisdiction over actions against the United States involving breach of express and implied contracts where damages are alleged to exceed $10,000. For this reason alone, if not for the others, the Court must allow summary judgment for the United States on Count 2.

Beyond a repetition of Count 1's claim for negligent infliction of emotional distress, Count 3 alleges misrepresentation,

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[4] *See also Malcoff* v. *Coyier*, 14 Ariz. App. 524, 484 P.2d 1053, 1055 (1971).

[5] *See Savoca Masonry Co., Inc.* v. *Homes & Son Const. Co., Inc.*, 112 Ariz. 392, 542 P.2d 817, 819 (1975) ("It is elementary that for an enforceable contract to exist there must be an offer, an acceptance, consideration and sufficient specification of terms so that the obligations involved can be ascertained").

apparently based on a "breach of trust," the communication of "inaccurate or misleading information," and "withholding" relevant information. While the Cavanaughs disagree, the Court can identify no claim herein other than misrepresentation. Although the United States consents to suit in federal court under the Federal Torts Claims Act, the statute does not waive sovereign immunity for certain intentional torts, including misrepresentation. In relevant part, the statute preserves sovereign immunity for "any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, *misrepresentation*, deceit or interference with contract rights." 28 U.S.C. § 2680(h) (emphasis added). Accordingly, the Court rules that Federal Torts Claims Act entitles the Air Force to summary judgment on count 3 as matter of law.

The Cavanaughs' last claim requests the extraordinary relief of mandamus, 28 U.S.C. § 1361. The Cavanaughs assert that the Air Force had a duty to them under Air Force Regulation 30-25 to "undertake and complete an impartial and thorough investigation into decedent's death." As stated above, however, the Cavanaughs concede that the Air Force did in fact investigate their son's death. Since it cannot be said the the Air Force failed to "undertake and complete" an investigation, it must be that the Cavanaughs take issue with either the impartiality or the thoroughness with which this investigation was conducted. Finding no intimation of partiality or prejudice, the Court concludes that the only problem the Cavanaughs have with the Air Force report of investigation lies in its purported lack of thoroughness. For a dispute about scope, depth, or breadth of inquiry — given that the Air Force concededly complied with the letter if not the spirit of Regulation 30-25, the Court hesitates to invoke the extraordinary relief of mandamus.

Moreover, 28 U.S.C. § 1361 authorizes mandamus only to compel the performance of "a duty owed the plaintiff." The burden for establishing this duty is upon the Cavanaughs. *Feldstein* v. *E.E.O.C.*, 547 F. Supp. 97, 101 (D. Mass. 1982) (to be entitled to mandamus relief, the plaintiff "has the burden of demonstrating each element clearly and undisputably"). To prevail, the Cavanaughs must show a "clear right to the relief," a "clear duty to act," and "no other adequate remedy." *Sheehan* v. *Army and Air Force Exchange Service*, 619 F.2d 1132, 1140-1141 (5th Cir. 1980), *rev'd on other grounds*, 456 U.S. 728 (1982); *Feldstein* v. *E.E.O.C.*, 547 F. Supp. at 100-101. Significantly, mandamus may be used "only to command an official to perform a ministerial act" which is, in turn, defined as a "positive command and so plainly prescribed as to be free from doubt." *Feldstein* v. *E.E.O.C.*, 547 F. Supp. at 100-101; *International Fed. of P. and T. Engin., Loc. No. 1* v. *Williams*, 389 F. Supp. 287, 290 (E.D. Va. 1974), *aff'd*, 510 F.2d 966 (4th Cir. 1975). In addition, mandamus is inappropriate to direct the manner in which discretionary acts are to be performed. *Panama Canal Co.* v. *Grace Line Co., Inc.*, 356 U.S. 309, 318 (1958) (citing *Marbury* v. *Madison*, 1 Cranch 137, 166 [1803]); *Feldstein* v. *E.E.O.C.*, 547 F. Supp. at 101; *J.E. Brenneman Co.* v. *Schramm*, 473 F. Supp. 1316, 1318-1319 (E.D. Pa. 1979) (Allegation that federal officer or employee owes plaintiff a legal duty which is specific, plain, ministerial, devoid of exercise of judgment or discretion is a requisite for federal mandamus jurisdiction).

Upon the facts before it and absent any indication of bad faith, the Court holds that completed Air Force report of investigation constitutes the required ministerial act while the degree of "thoroughness' represents elements of judgment and discretion beyond the reach of mandamus. The Court nowhere finds a duty that the Air Force investigate a death to the satisfaction

of the next of kin. The United States is entitled to summary judgment on Count 4 as matter of law.

III.

Accordingly, summary judgment must be entered for the United States.

SO ORDERED.

WILLIAM G. YOUNG
UNITED STATES DISTRICT JUDGE

Appendix C.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Civil Action No.

* *

LOUISE V. CAVANAUGH *
WILLIAM J. CAVANAUGH *
Individually and *
LOUISE V. CAVANAUGH, as *
Administrator of the Estate of *
2nd. Lt. William J. Cavanaugh, Jr., USAF *
Plaintiffs *
vs. *
UNITED STATES OF AMERICA, and *
DEPARTMENT OF THE AIR FORCE *
Defendants *

* *

Plaintiffs, upon information and belief, allege:

1. Federal jurisdiction is based on 28 U.S.C. § 2671, 2679(b), 1331, 1346, and 1361 etc.

2. The Plaintiffs reside in Middlesex County Massachusetts and venue is based on 28 U.S.C. § 1391(3), 1402(a) (1).

3. An administrative tort claim was filed pursuant to 28 U.S.C. § 2674(a) on 11 April 1984 with the United States Department of Air Force. Claim of 11 April 1984 was subsequently denied on 29 June 1984.

4. Louise V. and William J. Cavanaugh are married and maintain their family residence at 3 Merifield Lane, Natick, Massachusetts. They had five children. Their son William J. Cavanaugh, Jr. died on or about April 9, 1982 while he was serving on active duty as a second lieutenant in the United States Air Force assigned as a Drug and Alcohol Abuse Counselor to the Social Actions Sections, Headquarters 82nd Flight Training Wing, Williams Air Force Base, Chandler Arizona; William J. Cavanaugh, Jr. will be referred to herein as "decedent".

5. The acts complained of below have caused and continue to cause severe and unrelenting emotional distress to the individual plaintiffs and it is further alleged that the acts complained of below caused emotional distress to the plaintiffs as a family unit.

6. On April 11, 1982 at or about 11:15 AM, the decedent was found in the second floor bedroom of his condominium-apartment residence in Mesa, Arizona lying on his side with an apparent gunshot wound to the head by a co-tenant, Lt. Randal T. Tollefson, United States Air Force, a pilot instructor also assigned to the 82nd Flight Training Wing, Williams Air Force Base. Lt. Tollefson notified the Mesa Police and Paramedics who subsequently initiated a criminal investigation. At 11:42 AM Mesa Police Lieutenant Conway notified the decedent's assigned place of duty at Williams AFB. US Air Force Incident Report # 4-35-82 dated 13 April 1982 indicates the following facts: "Cavanaugh was shot once in the head with an AR15 rifle which killed him instantly . . . that the gun belonged to Lt. Annis (Lt. Glen Annis, US Air Force, another co-tenant of Apartment 138, 1051 So. Dobson, Mesa, Arizona, who had allegedly left on military leave to England on Friday morning April 9, 1982) . . . that Cavanaugh's body was found in the bedroom closet lying on the AR15 rifle that killed him . . that a note was found on a

desk located in the bedroom closet but its handwriting was scribbled and shakey and they couldn't be positive of the writing . . . that the body was turned over to the County Medical Examiners Office for further investigation . ." On or about 1 PM, 11 April 1982, following a brief on scene investigation by Mesa Police Department personnel, the decedent's fully clothed body, with paper bags placed over the hands to prevent contamination was transported to the Maricopa County Medical Examiners Mortuary 'for autopsy' . ." No US Air Force investigative personnel visited the death scene. On or about 1 AM, April 11, 1984, the apartment was turned over by the Mesa Police Department detective to the decedent's co-tenant Lt. Tollefson and to Capt. Robert E. Shearer III, US Air Force owner of the condominium apartment.

7. On or about 1 PM, April 11, 1984, Captain Shearer retained a local apartment cleaning and repair service (Sunset House Co.) whose personnel proceeded to remove carpeting, rearrange and dispose of articles belonging to the decedent, clean repair and fumigate the apartment. Capt. Shearer later demanded payment for these services from the plaintiffs and threatened to withhold certain unknown items of the decedent's property he had allegedly taken into custody unless the amount due ($530.33) was paid to him.

8. Lt. Terrance Regan, US Air Force, and Capt. McCahon, US Air Force Chaplain at some time prior to 3 PM, April 11, 1982 visited the Maracopa County Morgue to view the decedent's body and to administer the last rites of the Roman Catholic Church. Lt. Regan was subsequently assigned as Summary Court Officer to handle disposal of the decedent's personal effects. At some time after 3 PM on April 11, 1982, Lt. Regan went to Apt. 138, 1051 So. Dobson to destroy decedent's credit cards and to take possession of the decedent's automobile.

9. On or about 9:30 PM, 11 April 1982, Major Ron Sharp, US Air Force, visited the plaintiffs' residence at 3 Merifield Lane, Natick, Massachusetts, to notify them of the decedent's death. Major Sharp advised that all inquiries as to the details and circumstances of the decedent's death should be made through Headquarters US Air Force Manpower and Personnel Center, Randolph AFB, Texas. Major Sharp further advised that the decedent's Commanding Officer at Williams Air Force Base would be designating an Investigating Officer under current AF Regulations and would be preparing a written confirming summary of the known facts and circumstances to the plaintiffs within 24 hours. Major Sharp further advised that US Air Force Casualty Assistance personnel from Hanscomb AFB, Bedford, Massachusetts would contact plaintiffs on the following day for further assistance.

10. On or about 9 AM, April 12, 1982, the decedent's body was examined by H.H. Karnitschnig, MD, Chief Medical Examiner, Maricopa County, Arizona. No autopsy nor other medical/forensic tests except for a routine blood sample toxicology test for alcohol content, were performed. Laboratory test report indicated 0.01% alcohol (trace). The decedent's uniform in which he was clothed when his body was found was not removed for detailed physical examination of his body or of the uniform. The Medical Examiners report states "This man had a history of depression. He shot himself with a .223 caliber rifle." Neither the Medical Examiner nor investigative personnel from his office visited the death scene, the decedent's place of duty or interviewed any US Air Force personnel, family members, friends or neighbors having knowledge of the decedent.

11. At some time during the afternoon of April 12, 1982 the decedent's body was removed to US Air Force Contract Mortuary (Melcher Funeral Home, Mesa, Arizona). Sgt. Horney, US Air Force Mortuary Affairs NCO authorized disposal

of the uniform in which the decedent remained clothed upon transfer to the US Air Force Contract Mortuary.

12. On or about 2 PM, April 12, 1982, Mesa Police Department Detective Tefft went to Williams AFB to interview US Air Force Office of Special Investigations (OSI) personnel who subsequently arranged for interviews by Detective Tefft of a limited number of Air Force personnel who were acquainted with or worked with the decedent. Several key US Air Force personnel with whom the decedent had close contact were not interviewed, including S. Sgt. Leslie Kendrick, NCO in charge of the Williams AFB Substance Abuse Section whom the decedent supervised and had daily contact, Lt. Glen Annis, the decedent's co-tenant and owner of the AR15 rifle which allegedly killed him, Lt. Col. William Zint, Executive Officer of the decedent's assigned command, Lt. Terrance Regan, which whom the decedent ate dinner on his last known presence at Williams AFB and other US Air force medical personnel with whom the decedent worked in connection with his drug abuse counseling duties. Futhermore, no interviews or investigations were conducted of US Air Force personnel with whom the decedent had counseled in connection with his assigned duty.

13. On or about April 12, 1982, Mesa Police Department laboratory tests for finger prints were conducted on the AR15 rifle which allegedly killed the decedent and on cartridges and a magazine clip also taken in evidence from the death scene. All tests proved negative. A 22 caliber shell also found at the death scene was not analyzed or explained in the Mesa Police Department report. No powder residue tests were conducted on the body or on the clothing of the decedent. No analysis of the handwriting on the alleged suicide note was conducted by the Mesa Police Department or by US Air Force OSI investigative personnel.

14. One plaintiff (decedent's father) accompanied by his brother and two surviving sons travelled to Williams AFB on the afternoon of April 12, 1982 arriving on or about 1:30 AM April 13, 1982. The plaintiff's intent was to meet with all responsible US Air Force and civil authorities to ensure that a thorough investigation was being initiated in view of the lack of any prior evidence of motive or propensity for suicide on the part of the decedent and because the potentially sensitive nature of his duties as a drug abuse counselor. On or about 9 AM, April 13, 1982, Col Larry Dillingham, Commanding Officer of the 82nd Flight Training Wing, the decedent's senior most command headquarters at Williams Air Force Base, met with the plaintiff and family party and gave direct and clearly understood assurances that, while the Mesa Police Department had primary jurisdiction for the criminal investigation of the decedent's death, the US Air Force Office of Special Investigations would closely monitor and directly and actively cooperate in the civil investigation. Said assurances were repeated to the plaintiff subsequently by Mr. Scott Deacon, Williams AFB OSI Detachment Commander.

15. On or about 1:30 PM, April 13, 1982, the plaintiff and family party met with Mesa Police Department personnel and US Air Force OSI Agent Barwick. They were advised by Mesa Detective Lieutenant Jones that interviews conducted by Mesa Police Department the preceding day at Williams AFB were not conclusive as to the decedent's motive, that ongoing medical and forensic tests had not been completed, and that the Mesa Police Department would continue working with US Air Force personnel on the investigation. Det. Lt. Jones showed the plaintiff and family party an enlarged photograph of an alleged suicide note. Doubts as to its authenticity were expressed by the plaintiff who gave Det. Lt. Jones a recent example of the decedent's handwriting in the form of a note received

on or about March 1, 1982 from the decedent to the plaintiffs. This sample of the decedent's handwriting was subsequently returned to the plaintiffs without analysis.

16. On or about 3 PM, April 13, 1982, the plaintiff and family party accompanied by US Air Force Summary Court Officer, Lt. Terrance Regan, visited the decedent's apartment at 1051 So. Dobson, Mesa. The plaintiff's sons, Mark and John Cavanaugh discovered a clear plastic bag containing large caliber ammunition, presumed to be rifle ammunition in a file draw in the decedent's bedroom. This potential evidence was turned over to Lt. Regan. Lt. Regan had previously arranged to have the decedent's co-tenant, Lt. Tolleffson, meet with the plaintiff at the apartment. Lt. Tolleffson advised that he had not been living at the apartment for some weeks and therefore could not comment on the decedent's state of mind or actions prior to his death. Tolleffson stated he did not know where the alleged death weapon or ammunition were kept in the apartment. He failed to note that at least one other weapon also belonging to co-tenant Lt. Glen Annis, and not taken into evidence by the Mesa Police, a CAR15 rifle, was also present in the apartment. He also failed to disclose that he had returned to the apartment on each of the two days immediately prior to his discovery of the decedent's body on April 11, 1982.

17. On or about May 3, 1982, after prior written request, the plaintiff received copies of the completed Mesa Police Department report, Case # 82-22318 officially entered into file as of April 27, 1982. Subsequent telephone conversations with the author of the report, Detective Tefft, were inconclusive and unsatisfactory to the plaintiffs as to substance and details of the investigation. On July 7, 1982, Detective Tefft advised the plaintiffs by telephone that only the Air Force could request reopening of the investigation.

18. By transmittal letter dated May 15, 1982, after prior written request by the plaintiffs, US Air Force Report of Facts

and Circumstances on the death of the decedent prepared under the provisions of Air Force Regulation 30-25 was received from Headquarters USAF Manpower and Personnel Center, Randolf AFB, Texas. After detailed review of the report, the plaintiffs wrote Lt. Col. Ballard of that Headquarters advising of obvious errors of omission and inconsistancies in the report and requesting advice on the proper US Air Force channels to pursue further investigation. The plaintiffs allege that the above report of Facts and Circumstances is grossly deficient in meeting the requirements of Air Force Regulation 30-25 and, in particular, Section 5-15a of said regulation, "When a member dies from other than natural causes, the Air Force has an obligation that the death is thoroughly investigated and an impartial report is prepared . . .".

19. By letter of July 22, 1982 after repeated written and telephone communications by the plaintiffs, Lt. Col. Ballard, Hdq. USAF Manpower and Personnel Center, directed the Williams AFB Command to review the plaintiffs' questions on the original USAF Facts and Circumstances Report raised by the plaintiffs. The plaintiffs telephoned Lt. Col. Zint, Williams AFB Executive Officer and Base Inspector General responsible for coordinating the review. Lt. Col. Zint advised the plaintiffs that he was unable to communicate directly with them since the review was under "Congressional" scrutiny. By transmittal letter of September 11, 1982, the plaintiffs received from Hdq. USAF Manpower and Personnel Center, the completed review report. The plaintiffs allege that this review also is and remains deficient and fails to meet the requirements of Air Force Regulation 30-25.

20. Thus both the intitial Facts and Circumstances Report prepared under US Air Force Regulations 30-25 and the subsequent review directed by US Air Force Manpower and Personnel Command, fail to comply with the specific and man-

datory requirements of the regulation, are grossly and negligently deficient and contain numerous errors and omissions of fact that remain uncorrected as of the date of this complaint. These documents further reveal the failure of the US Air Force to actively investigate facts and circumstances pertinent to the death of the decedent to which only the US Air Force was privy and had access to, and further failed to actively cooperate with, monitor, and follow-up on the then concurrent civil investigation into the death of the decedent.

21. During the period October through December 1982, the plaintiffs, despite repeated requests in writing and by telephone, were unsuccessful in arranging personal meetings with USAF Congressional Liaison or other Air Force personnel to review the inadequacies of the US Air Force Facts and Circumstances Investigation or to obtain the support of the US Air Force in seeking to reopen an investigation by appropriate civil authorities. Further, in October 1982, a request by Congressman Barney Frank on behalf of the plaintiffs to the US Department of Justice to undertake an independent investigation of the decedent's death was denied.

22. In December 1982, the plaintiffs appealed to President Ronald Reagan, as the decedent's Commander-In-Chief, to direct an investigation of the decedent's death by the Federal Bureau of Investigation. This appeal was denied by the US Air Force Presidential Liaison Office which office also refused to meet with the plaintiffs' to discuss their appeal.

23. On or about January 12, 1983, certain evidence concerning possible illegal drug activity at Williams AFB about which the decedent was suspicious came to the plaintiff's attention. The plaintiffs immediately notified US Air Force OSI, Hanscomb AFB, Bedford MA which office indicated no interest in receiving the information or in forwarding it to any other responsible US Air Force or Federal agencies.

24. During January and February 1983, the plaintiffs undertook additional written and telephone communications with the offices of the Arizona Attorney General and Maricopa County Attorney to advise them of additional facts and circumstances on the decedent's death discovered since the original Mesa Police Department investigation. The plaintiffs were repeatedly referred by these authorities either to the Mesa Police Department or to the Air Force.

25. On December 14, 1983, at the request of plaintiff's Congressman, Barney Frank, and as directed by Secretary of Defense, the plaintiffs met with Headquarters US Air Force Office of Special Investigations personnel at Hanscomb AFB to review all information and material held both by the plaintiffs and by the US Air Force pertinent to the decedent's death. The plaintiffs' stated purpose of the meeting was to gain the support of the U.S. Air Force in their request for a new and impartial investigation by competent local civil and/or federal authority. Col. Hoden, US Air Force OSI Director of Criminal Investigations, during and following that meeting, maliciously and fraudulently withheld at least the following documents from the plaintiffs namely: 1) "List of Possible Investigative Leads in the Death of Lt. William J. Cavanaugh" prepared by Major Owens AF/OSI on 17-18 Oct. 1983 and 2) correspondence between Col. Hoden and Mesa Police Chief Kotsum dated 11-1-83 indicating that the Mesa Police Department would have no objection to further investigation by the Air Force and/or by the Federal Bureau of Investigation.

26. On or about July 19, 1983, the plaintiffs received, along with other US Air Force file copies of records requested in preparation for this complaint, the following undated memorandum: "Department of the Air Force Office of the General Counsel — Memorandum — Col. Bottorff — There really isn't much we can do about this other than continuing

to make 'soothing sounds.' If we want to humor this guy, we could have the OSI, on behalf of the family, request that the Mesa PD review its investigative file. No doubt the civilians would answer that review of the files revealed no basis for reopening the investigation (& it's obvious there *is* none); however, then we could tell him we tried. In any case, looks like you should staff this back to Col. Ballard. It's frustrating to have to keep giving the same response over & over, especially since there's nothing new to respond to. However, it would be politically unwise to ignore his letters. (s) G.A. Reinhart." The above memorandum addressed to US Air Force Congressional Liaison Officer, Lt. Col. Bottorff, clearly indicates that contrary to written advice repeatedly sent to the plaintiffs, the Air Force could have requested reopening of or supported the plaintiffs' request to reopen the investigation of the decedent's death by the Mesa Police Department. Furthermore, the memorandum reveals the callous insensitive, and non-professional attitude by US Air Force personnel repeatedly experienced by the plaintiffs throughout the entire period following the decedent's death.

27. The defendant, United States Air Force, interfered through the possession and control of decedent's personal effects and interfered through failure to follow its regulations, customs, and practices with the plaintiffs' parental, family, and human right to determine the cause of and true facts and circumstances surrounding their sons death all in violation of the First and Fifth Amendments of the Constitution of the United States.

28. The defendant, United States Air Force, by virtue of its control over its members while alive and after their death owe an extraordinary duty of care to the next-of-kin of deceased active duty members of the Air Force and, in the exercise of that duty, the Air Force must ensure due care in its represen-

tations and communications to the next-of-kin giving due regard to their emotional state.

FIRST CAUSE OF ACTION

29. Plaintiffs repeat and reallege paragraphs 1 through 28 above.

30. The United States Air Force failed to conduct a thorough and impartial investigation into the death of one of its members in accordance with the mandatory provisions of Air Force Regulation 30-25 and otherwise failed to follow its regulations, customs and practices.

31. As a result of the foregoing, the plaintiffs have suffered and continue to sufter severe emotional distress.

SECOND CAUSE OF ACTION

32. Plaintiffs repeat and reallege paragraphs 1 through 28 above.

33. The United States Air Force expressly and repeatedly asserted that a thorough investigation would be performed, either by itself or in conjunction with civil authorities. The failure of the Air Force to actively monitor and otherwise cooperate with civil authorities and the obvious omissions and inadequacies in both civil and Air Force investigative reports constitutes a breech of verbal agreement with the plaintiffs in that the plaintiffs relied on these assertions to their detriment.

34. As a result of the foregoing the plaintiffs have suffered and continue to suffer severe emotional distress.

THIRD CAUSE OF ACTION

35. Plaintiffs repeat and reallege paragraphs 1 through 28 above.

36. The United States Air Force breached the trust assumed by them on behalf of the plaintiffs in their negligent failure to support in a timely and diligent manner the plaintiffs' requests that all reasonable medical and forensic tests be conducted by competent civil and Air Force authorities to determine the true facts and circumstances of the decedent's death. That the Air Force communicated inaccurate and misleading information as to its authority and ability to support the plaintiffs' requests for pursuing a thorough and impartial investigation. Further that the Air Force withheld information of direct relevance in the plaintiffs' inquiries. Also that the Air Force negligently lost or allowed to be destroyed personal effects of the decedent and thus deprived the plaintiffs of potential evidence of value to a subsequent criminal investigation.

37. As a result of the foregoing, the plaintiffs have suffered and continue to suffer severe emotional distress.

FOURTH CAUSE OF ACTION

38. Plaintiffs repeat and reallege Paragraphs 1 through 28 above.

29. The United States Air Force failed to perform duties required by Air Force Regulation 30-25. Moreover, the repeated assertions by the Air Force give rise to a duty owed to the plaintiffs because of the special and unique relationship that exists between the Air Force and next-of-kin of its members to perform and to assist civil authorities in the completion of a thorough investigation of the decedent's death.

40. As a result of the foregoing, the plaintiffs have and continue to suffer emotional distress.

41. Plaintiffs have exhausted all their administrative remedies on each of the above causes of action and, as a result of the continued lack of actions by the United States Air Force, as enumerated herein, plaintiffs suffer irreparable injury for which there is no other adequate relief than that sought herein.

WHEREFORE, plaintiffs pray for the following relief against the defendants:

1. That the Court adjudge, decree and order that the United States Air Force undertake and complete an impartial and thorough investigation into the decedent's death. Further that the Air Force cooperate with and cause to have answered all reasonable questions by the plaintiffs as to the true facts and circumstances of the decedent's death.

2. That the Court award the plaintiffs judgment for damages in the amount of 1,000,000 dollars.

3. That the Court award the plaintiffs their cost of suit incurred herein.

4. That the Court grant such other and further relief as to the Court seems proper.

DATED: Boston, Massachusetts
December 28, 1984

By: LOUISE V. CAVANAUGH
PRO SE

WILLIAM J. CAVANAUGH, COL. USAR (Ret.)
PRO SE

LOUISE V. CAVANAUGH as
Administrator of the Estate of
2d. Lt. WILLIAM J. CAVANAUGH, JR., USAF
PRO SE

By: _____
LOUISE V. CAVANAUGH
3 Merifield Lane
Natick, Massachusetts 01760
(617) 653-5122

By: _____
WILLIAM J. CAVANAUGH, COL. USAR (Ret.)
3 Merifield Lane
Natick, Massachusetts 01760
(617) 653-5122

Appendix D.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LOUISE V. CAVANAUGH, ET AL.,
PLAINTIFFS,

V. CIVIL ACTION
NO. 84-4114-Y

UNITED STATES GOVERNMENT, ET AL.,
DEFENDANT.

AFFIDAVIT OF ROBERT W. GUIMOND

Robert W. Guimond, on oath, deposes and says as follows:

1. I am Professor of Medical Physiology at the University of Massachusetts, Boston, Massachusetts. I hold degrees of Doctor of Philosophy in Physiology from the University of Rhode Island and Juris Doctor from New England School of Law. I am admitted to practice law before the State Bar of Massachusetts and the Federal District Court, Circuit Court of Appeals and the Supreme Court of the United States.

2. I am familiar with the known facts and circumstances associated with the death of Lt. William J. Cavanaugh, Jr. having read the Mesa Police Department Report, the USAF Facts and Circumstances Report and subsequent review report prepared by US Air Force personnel at Williams AFB, Arizona, and various correspondence between Col. William J. Cavanaugh, USAR (Ret.), father of the decedant and US Air Force and other federal officials, Members of Congress, and State of Arizona Officials pertinent to the attempts of the Cavanaughs to secure a thorough and impartial investigation into their son's death.

3. I assisted and gave advice on a pro bono basis to the Cavanaugh family in their administrative tort claim pursuant to 28 U.S.C. § 2674 (a), filed on 11 April 1984 with the US Department of the Air Force, which claim was subsequently denied on 29 June 1984. I am continuing to assist the Cavanaughs in connection with their ongoing complaint in U.S. District Court, District of Massachusetts, Civil Action No. 84-4114-Y.

4. On December 14, 1983, at the request of Colonel and Mrs. Cavanaugh, I participated in a meeting with US Air Force, Office of Special Investigations Personnel at Hanscom Air Force Base in Bedford, Massachusetts with regard to substantive questions the Cavanaughs believed remained with respect to the prior investigations conducted by the Mesa (Arizona) Police Department, by the Maricopa County (Arizona) Medical Examiner, and by the United States Air Force.

Present at the meeting in addition to Colonel and Mrs. Cavanaugh and myself were Colonel J. Paul Hoden, USAF, Major Richard Weaver, USAF and Major James S. Cohen, USAF (attorney) representing the U.S. Air Force Headquarters Office of Special Investigations, Division of Criminal Investigations. The meeting lasted approximately five and one half hours with all six participants continuously present.

5. Prior to the meeting of December 14, 1983, I reviewed the complete file of investigative reports and correspondence documented by Colonel and Mrs. Cavanaugh. The Cavanaughs advised me that this meeting on December 14, 1983, 2 years and 7 months after the death of Lt. Cavanaugh, was their first opportunity to meet with USAF investigative authorities concerning their questions and, despite the fact that the meeting was directed by Secretary of Defense Weinberger as a result of an appeal by their Congressman, Barney Frank, they were encouraged that even at that late date, that the Air Force might provide substantive assistance in answering their questions of

long standing on their son's death. The correspondence leading to the meeting is attached as Exhibit A. The Cavanaughs also advised me prior to their meeting of their concern that Colonel Hoden, who had arranged the meeting, had several months previously in August 1983, refused to meet with them and that Colonel Hoden had further advised them that he would not pursue their request for official US Air Force support to reopen an investigation by civil authorities of their son's death. Colonel Hoden's letter is attached as Exhibit B.

6. At the outset of the meeting of 14 December 1983, Colonel Cavanaugh stated that the purpose of the meeting, from the Cavanaughs' standpoint, was to review all reports and documents in the posession of each party (the Cavanaughs and the Air Force), to exchange any documents or information missing from one another's files, and to establish a common base of factual information from which the Cavanaughs could frame their remaining questions to the Air Force following the meeting. A page by page comparative review of the respective files revealed the following "new" information provided by the Cavanaughs to the Air Force:

a. Copies of Lt. Cavanaugh's Official Officer Performance Evaluations were given to Colonel Hoden. These indicated generally superior performance in assignments prior to the assignment he had at the time of his death which refute a signed statement by Lt. Randall Tollefson in the USAF Facts and Circumstances Review Report dated on or about August 1982 that Lt. Cavanaugh was worried about and had trouble in an IG Inspection in previous assignments. Copies are attached as Exhibit C.

b. Colonel Cavanaugh called Colonel Hoden's attention to and asked for verification of the facts contained in the USAF Facts and Circumstances Review Report indicating that Lt. Randall Tollefson had returned to and entered apartment 138 at 1051 So. Dobson, Mesa, Arizona on each of the two days,

April 9 and 10, 1982, prior to his discovery of Lt. Cavanaugh's body on April 11, 1982 and that further investigation into these facts had never been undertaken by the USAF or by the Mesa Police Department.

c. Colonel Cavanaugh brought to Colonel Hoden's attention and asked for verification of the facts in the period immediately following Lt. Cavanaugh's death, that no US Air Force Office of Special Investigations personnel nor did the US Air Force Facts and Circumstances investigating officer, Lt. Foley (ordered to undertake an investigation pursuant to AF Reg 30.25) interview the following persons, among others, who were most likely to have had contact with Lt. Cavanaugh in the period immediately prior to his death:

(1) Lt. Glen D. Annis, USAF,
Lt. Cavanaugh's co-tenant, who allegedly left on leave to England on the early morning of April 9, 1985 and whose weapon allegedly fired the fatal shot.

(2) Lt. Randal Tollefson, USAF,
Lt. Cavanaugh's co-tenant who discovered Lt. Cavanaugh's body on April 11, 1985 at apartment 138, 1051 So. Dobson, Mesa, Arizona, and who allegedly was not staying at the apartment for several weeks prior to that date.

(3) Captain Robert E. Shearer, III, USAF,
owner of condominium Apartment 138, 1051 So. Dobson, Mesa, Arizona, who allegedly was present at the apartment immediately following the discovery of Lt. Cavanaugh's body by Lt. Tollefson on April 11, 1982 and who, on that date immediately following the removal of Lt. Cavanaugh's body, retained the services of a contract cleaning and repair company which company proceeded to move and remove unknown items from the alleged death scene of Lt. Cavanaugh and otherwise disturbed evidentiary material and objects at the premises.

(4) SSGT Leslie Kendricks, USAF,
Non-commissioned officer-in-charge of the Williams Air Force Base Substance Abuse Section under Lt. Cavanaugh's supervision who had day-to-day contact with Lt. Cavanaugh prior to his death.

(5) Lt. Terrance Regan, USAF,
Headquarters Squadron Commander at the 82nd Flight Training Wing and close friend of Lt. Cavanaugh, who had dinner and worked with him on the evening of April 8, 1982, the last known time Lt. Cavanuagh was at Williams Air Force Base prior to his death.

(6) Neighbors of Lt. Cavanaugh at condominium apartments adjacent to Unit 138, 1051 So. Dobson, Mesa, Arizona, who may have had some knowledge of the activities of Lt. Cavanaugh or others on April 9, 10 and 11, 1982 in and around apartment 138.

(7) Family members and personal friends of Lt. Cavanaugh with whom he maintained close contact by telephone by correspondence and otherwise in the period prior to his death.

(8) USAF Medical Personnel and other professionals with whom he had day-to-day contact in connection with his duties as Officer in Charge, and Drug and Alcohol Abuse Counsellor at the Substance Abuse Section at Williams Air Force Base, Arizona.

(9) Air Force Personnel whom Lt. Cavanaugh may have counseled or otherwise had contact with in the course of his duties in the period prior to his death.

d. A copy of a signed statement by Mr. Joseph P. Kane, III of Framingham, Massachusetts was given to Colonel Hoden. Mr. Kane was a close personal friend of Lt. Cavanaugh and to whom Lt. Cavanaugh had on two occasions prior to his death confided his suspicions as to possible illegal drug activity involving his immediate subordinate, non-commis-

sioned officer Ssgt. Kendricks, at the Substance Abuse Section at Williams Air Force Base; 1) during Lt. Cavanaugh's holiday leave in December 1981 and 2) by telephone on or about March 1982 about one month prior to his death. The above information was initially brought to the attention of the Cavanaughs by Mr. Kane in January 1983 immediately following public disclosure in area newspapers of the suspicious circumstances of Lt. Cavanaugh's death. The Cavanaughs immediately brought the above information to US Air Force authorities at Hanscom Field, Bedford, Massachusetts in January 1983. Copies of Mr. Kane's written statement and a letter from Colonel Cavanaugh to Lt. Col. French, USAF Base Inspector General, Hanscom AFB, are attached as Exhibits D and E.

e. Colonel Cavanaugh brought to Colonel Hoden's attention and asked for verification that a plastic bag of large caliber rifle ammunition was found by Lt. Cavanaugh's brothers, Mark and John on 13 April 1982 in a file drawer in Lt. Cavanaugh's room and turned over, on that date, to Lt. Regan, USAF Summary Court Officer.

f. Colonel Cavanaugh brought to Colonel Hoden's attention and asked for verification that a 22 caliber shell found at Lt. Cavanaugh's apartment and taken into evidence by the Mesa Police Department and later destroyed without explanation.

7. During the meeting of 14 December 1983, Colonel Hoden disclosed what the Air Force believed to be new information for the Cavanaugh's attention as follows:

a. A number of color photographs taken by a Mesa Police Department Photographer showing the alleged death scene, at Unit 138, 1051 So. Dobson, Mesa, Arizona. Colonel Cavanaugh advised Colonel Hoden that he had previously received several of the photographs and that he had recently purchased and had in his possession the full set of these photographs for analysis by the Cavanaugh's own medical forensic expert.

b. A number of photographs depicting most probable re-enactment scenarios by a person of the general physical characteristics of Lt. Cavanaugh using a rifle similar to that which allegedly killed Lt. Cavanaugh in positions which Major Weaver believed to be those Lt. Cavanaugh was in at the time the weapon was fired. Colonel Cavanaugh asked Major Weaver if he believed that Lt. Cavanaugh could have been drugged or otherwise been unconscious at the time and placed by others into the positions so depicted. Major Weaver's answer was in the negative. Major Cohen said he believed such a "staged" scenairo was unlikely in that part of the country and that a murder "out in the desert" would be the way it would be done there.

c. Colonel Hoden advised the Cavanaughs that the "Psychological Autopsy" they had previously requested be conducted would not be done by USAF psychologists as Colonel Hoden had indicated earlier by telephone to Colonel Cavanaugh was underway. Colonel Hoden showed a memorandum on the above matter prepared by Major Neil Hibler, USAF OSI Psychologist. The above is attached as Exhibit F.

8. At the conclusion of the meeting of 14 December 1983 Colonel Cavanaugh reiterated his understanding that the purpose of the meeting had been to establish a common factual basis in regard to the circumstances of Lt. Cavanaugh's death and was satisfied it had done so. Colonel Hoden assured the Cavanaughs that there were no additional investigative studies, reports or other documents produced by the US Air Force or civil authorities other than those covered during the meeting. Colonel Hoden also indicated he would provide a summary memorandum of the meeting to the Cavanaughs after which the Cavanaughs could frame their remaining questions. Colonel Hoden indicated that he would review with his command superiors, the Cavanaughs' request, regardless of the Air Force's final position on the matter of themselves undertaking

an investigation, that the Air Force support the Cavanaughs' attempt to obtain an investigation by appropriate civil authorities.

9. In late January 1984, the Cavanaughs received from Colonel Hoden the above promised memorandum summarizing the meeting of December 14, 1983. I subsequently reviewed a copy of the memorandum attached hereto as Exhibit G. The Cavanaughs indicated to me their disappointment that the summary did not accurately reflect the actual stated purpose of the meeting, nor cover many of the substantive issues discussed. Furthermore, Colonel Hoden appeared to summarily close off any hope the Cavanaughs had that the Air Force would do any further investigation into the death of Lt. Cavanaugh, nor would they support the Cavanaughs' attempts to seek re-opening of an investigation by civil authorities. Colonel Hoden's letter on this matter is attached as Exhibit H.

10. In February 1984, approximately two months following the December 14, 1983 meeting at Hanscom AFB, the Cavanaughs received from the Mesa Police Department, as a result of a request made on their behalf of Dr. William Q. Sturner, Chief Medical Examiner, State of Rhode Island, correspondence between the Mesa Police Department and Colonel J. Paul Hoden dated 11 October 1983. This correspondence included among other documents a memorandum of possible investigative leads regarding Lt. Cavanaugh's death investigation generated by US Air Force Major Owens which directly refuted the statement made to the Cavanaughs and to me that no additional documents existed other than those reviewed and discussed at the December 14, 1983 meeting (paragraph above). The above documents are attached as Exhibit I.

11. Whereas the Cavanaughs believed they had, upon the receipt of Exhibits H and I above, exhausted all administrative means to secure a thorough and impartial investigation into their son's death and to receive deserved answers to their

substantive questions as to how, why and when he died, they advised me of their intentions to pursue every possible judicial avenue to seek relief. Accordingly they filed an Administrative Tort Claim with the US Air Force, as stated in paragraph 3 above, on 11 April 1984, on the second anniversary of the discovery of their son's body. To this date neither the US Air Force nor any civil authority has provided the Cavanaugh family with even an estimated time and date of his death between the time he was last seen on April 8, 1982 and when his body was discovered on April 11, 1982.

12. I am persuaded, in view of the facts stated above and as a result of my own continuing study of the details and circumstances of this case, that the Cavanaughs have sufficient basis for their belief that their son's death may have resulted from other than suicide. The scientific tests relied upon by the Mesa Police Department, by the Maricopa County Medical Examiner and by US Air Force Investigative Personnel are in my judgment insufficient and inconclusive. Furthermore, the written statements of all individuals questioned as to Lt. Cavanaugh's mental state in the period preceding his death do not to any reasonable interpretation, nor do statements from family members, friends and co-workers made to Colonel Cavanaugh immediately before and after Lt. Cavanaugh's death, provide a convincing motive for suicide. It is my opinion that only a thorough and impartial investigation as is being sought by the Cavanaughs holds promise of revealing the true facts and circumstances of Lt. Cavanaugh's death.

13. In view of statements implicit in correspondence from the US Air Force and from Mesa Police Department officials I have seen in the Cavanaughs' files, I should like to add my impressions of the Cavanaughs' motives for pursuing an investigation of their son's death as a result of my working with them over the past several years. Colonel Cavanaugh is a dedicated Army Reserve Officer with over 31 years service,

who knows the military system and the responsibilities of those involved in investigations of tragic circumstances such as those associated with his son's death. He is also an experienced consulting engineer highly regarded in his field who has participated in countless engineering investigations and studies and is not unfamiliar with the conduct of investigations where diverse jurisdictions may be involved. Mrs. Cavanaugh, as well, served in the US Army Air Corps during the later part of World War II and is the daughter of a decorated retired US Navy Commander with over thirty years of distinguished service. The Cavanaughs have impressed me with their complete sincerity and their integrity in seeking truthful answers with respect to their son's untimely death in spite of the obvious emotional costs to them individually and to their entire family unit.

Respectfully Submitted,

_____

WILLIAM J. CAVANAUGH
Pro Se
3 Medfield Lane
Natick, MA 01760
(617) 653-5122

DATED: September 27, 1985

Signed under penalities of perjury this 27th day of September 1985.

_____

ROBERT W. GUIMOND, Ph.D., J.D.
307 Montgomery Street
Fall River, MA 029
(617) 676-9529

CERTIFICATE OF SERVICE

Middlesex, ss. Natick, Massachusetts
September 27, 1985

I, the below signed, hereby certify that I have this day served this AFFIDAVIT OF ROBERT W. GUIMOND, by mailing a copy of same by U.S. Mail, Certified, Return Receipt Requested, to Joan I. Milstein, Assistant U.S. Attorney, 1107 McCormack Federal Building, Boston, MA 02109.

_____

WILLIAM J. CAVANAUGH
Pro Se